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SUBJECT: 2007 SPECIAL 301 BRAZIL OCR RESULTS

REF: STATE 107819, BRASILIA 2038, BRASILIA 130

¶1. The U.S. Government (USG) Special 301 Committee has concluded its deliberations regarding Brazil's status on the Special 301 list following the Out-of-Cycle Review (OCR). The Office of the U.S. Trade Representative (USTR) notified the Brazilian Embassy in Washington on February 15 that Brazil has been maintained on the Special 301 Watch List (WL). Post has also notified Brazil's Ministry of External Relations on February 15. This cable provides some background in the event that Post has further discussions with the Government of Brazil (GOB) on the OCR.

BACKGROUND

¶2. Each Spring USTR issues the Special 301 Report to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property (IP) protection. The USG Special 301 Committee conducted an OCR for Brazil before the start of the regular 2008 annual review.

¶3. The Spring 2007 decision to conduct an OCR for Brazil was intended to give Brazil additional time to make progress on IPR enforcement and patent and trademark processing and to clarify ambiguities with regard to its data protection regime. The Special 301 Committee developed a number of elements to be pursued in the OCR, which were initially presented as an action plan to the GOB in August 2007. The action plan also constituted the basis for day-long discussions with Brazilian officials held on January 15, 2008.

ISSUES TO DISCUSS

¶4. Special 301 results for Brazil: If needed, we request that Embassy Brasilia raise the following in its discussion with host government officials.

-- The USG has completed its IPR OCR and will be maintaining Brazil's WL position as we move into the normal 2008 review process. The USG does not intend to make a public announcement since Brazil's status is not changing. The USG does not object if the GOB wishes to do something publicly.

-- The USG very much appreciates the seriousness with which Brazil approached our January 15 meeting, and the excellent presentations made by many ministries and agencies of your government.

-- The USG continues to be impressed with Brazil's efforts with regard to IPR enforcement. While we maintain ongoing concerns in some areas of IP policy, including patent processing and protection of data, we are prepared to continue working together on these through constructive dialogue.

-- IP remains an important part of our overall trade relationship.

We look forward to continuing a productive discussion of these issues at the upcoming Brazil Consultative Mechanism (BCM) meeting.

RICE